CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 277

November 2, 1964

WITHHOLDING: PAYMENTS TO SEAMEN OUT OF SUPPLEMENTAL BENEFITS FUND

Syllabus:

The Supplemental Benefits Fund has been established by an agreement between a seamen's union group and an employer's association to provide a vacation benefits fund for eligible employees. A nonprofit corporation was organized to act as the trustee to hold and administer the fund. The reason for establishing the fund as stated in the agreement is that "The parties recognize and agree that eligible seamen work for many different employers over a period of time. The parties have, therefore, agreed to establish Supplemental Benefits Fund which will make available to eligible seamen payments in lieu of vacation."

The employers' contributions are determined as follows by the agreement:

> "Each member Contributing Employer shall contribute to Supplemental Benefits Fund for each day of Covered Employment of eligible seamen by such Contributing Employer beginning October 1, 1958, in the manner hereinafter set forth. The initial basic rate set by the association has been accepted by the Union as set forth in Exhibit A."

Exhibit A provides for a rate of contributions of an amount varying from $1.25 to $1.40 per day of Covered Employment. Covered Employment is defined in the agreement as:

> "Employment either heretofore or hereafter by a Contributing Employer in a position (whether aboard ship or in standby or shore gang) covered by said collective bargaining agreement dated October 1, 1958, and employment defined as Covered Employment in VIII. A seaman shall not be regarded as employed in Covered Employment on any day for which he is not paid or entitled to be paid wages by a Contributing Employer."

Paragraph VIII further defines Covered Employment as follows:

> "Covered employment within the meaning of this supplemental agreement shall include all employment covered by a collective bargaining agreement between the Union, or any of the unions comprising it, and each such company, and prior to termination of the respective company's participation in the Supplemental Benefits Plan. In determining each such company's obligation to pay contributions, a seaman shall be regarded as employed in Covered Employment on

any day for which he is paid or entitled to be paid, wages by such company."

Payments and eligibility for payments are provided for in the agreement, in part, as follows:

"(a) A seaman shall be eligible for supplemental benefits on account of Qualifying Employment on or after October 1, 1958, at the rate of three (3) days pay for each thirty (30) days of Qualifying Employment. Qualifying Employment may be accumulated with more than one company.

"(b) No seaman may claim supplemental benefits for any period of Qualifying Employment of less than 120 days."

The agreement also provides that payments may be made in case a seaman dies with accrued rights to benefits.

Public Law 86-263, 86th Congress, 1st Session, approved September 14, 1959, provides:

". . . no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them."

Are amounts to be paid to seamen out of Supplemental Benefits Fund subject to withholding, pursuant to Section 18807, for personal income taxes due from the employee with respect to whom they are paid?

The enforcement of collection of state income taxes from seamen is made difficult because notices to withhold to their employers are not effective against the seamen's wages. Such wages are free from attachment, arrestment, or encumbrance under the provisions of Section 12 of Seaman's Act of 1915, 46 U.S.C. 601. The inhibition is effective against a levy for federal income taxes and would appear to apply to a state, also. G.C.M. 3697, VII-1 Cum. Bull. 133. The statute was recently amended to prohibit, specifically, withholding from wages pursuant to the provisions of the tax laws of any state. The Congressional Committee Report pertaining to the amendment states as its purpose:

"The proposed legislation, S. 1958, would provide that no part of the wages of a seaman who is a member of a ship's crew would be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, Commonwealth or subdivision thereof. This legislation would clarify the apparent conflict between section 601, title 46, United States Code, which protects seamen's wages from "attachment, encumbrance or arrestment" and the recently enacted provisions of State law which require withholding of local taxes from the wages of seamen.

"Present practice of the steamship operator is to pay the crew in the American port in which the vessel docks, even though the wage is earned in transit between the port of landing and some other port. The port of payment is treated as the place where the wage is earned for the purpose of the State withholding laws."

The extraordinary type of arrangement for providing to eligible seamen compensation in lieu of regular vacations with pay is occasioned by the abnormal conditions of employment. Periods of employment are of irregular duration based upon the length of the voyages, and many of the seamen work for different employers over a period of time. As it is not feasible to provide regular annual vacations with pay directly to employees, the employers pay into Supplemental Benefit Fund additional compensation in lieu of such vacation payments. In the normal course of employment, eligible employees are paid in cash from the fund in direct relationship to the work performed in the service of the contributing employers. Accordingly, from the viewpoint of the services performed that are being compensated, the payments to eligible employees from the fund would seem to be equivalent in nature to the wages paid directly by the employer.

The California Department of Employment and the Unemployment Insurance Appeals Board have had occasion to consider payments to seamen from the Fund. The former has ruled that the benefits paid to the seamen are taxable wages under the California Code at the time benefits are paid to the employee and should be reported to the Department. In the Unemployment Insurance Appeals Board case, wherein the claimants and the Department of Employment stipulated that the payments made from the Fund are wages within the meaning of the Unemployment Insurance Code, the Board held that the wages are additional compensation paid in lieu of vacation and are payable with respect to those weeks in which the qualifying services are performed. (Benefit Decision No. 6597, January 22, 1960). The Board's decision is based on its conclusion that the benefits were paid for services which had been previously rendered and fully performed prior to the time that the claim was made to obtain them. Although these decisions are not necessarily binding on the Franchise Tax Board, it would seem advisable to give them utmost consideration in the absence of any different definition of wages in the Personal Income Tax Law.

There have been no judicial decisions concerned with Supplemental Benefits Fund payments, but somewhat analogous decisions tend to the conclusion that such supplemental payments are of the same nature as the basic wage paid to the employee. With respect to the nature of the payments, a case dealing with claims in bankruptcy states that "Vacation pay is, by all of the decisions, regarded as wages." United States v. Munro-Van Helms Co., Inc., 243 Fed. 2d 10, 13. As to whether the nature is changed because the payments are not made directly by the employer to the employee, cases dealing with health and welfare fund contributions, which are not paid to employees but into a fund for the employees' benefit, hold that such payments are entitled to the same treatment

(for the particular purposes involved) as is the wage paid to the employee. Bernard v. Indemnity Insurance Co., 162 Cal. App. 2d 479; Sailors' Home of the Pacific v. United States, (U.S. Dist. Court, N. Dist. Cal., August 10, 1959). Little authority has been found which would support the position that the Supplemental Benefits Fund vacation payments are subject to different treatment than the wages paid directly by the employer to the employee. The case of United States v. Embassy Restaurant, Inc., 359 U.S. 29, holding that welfare fund contributions are not entitled to priority in bankruptcy proceedings, has been noted, but its reasoning is not thought to control the instant problem.

While the Federal statute contemplates prohibiting withholding for the State at the source by employers from current wage payments, there appears to be no sound basis for distinguishing that type of withholding from the type of withholding for the state provided for by Section 18807. The specific language of the Federal statute is certainly broad enough to embrace any type of withholding by the state. Also, the policy of Congress to protect the seaman's wages from withholding by one state, where the seaman is paid in a local port even though the wage is earned in transit between the port of landing and some other port, is equally applicable to the supplement payments.

The prohibition against withholding from seamen's wages applies only to wages of "a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade," 46 USCA @ 601. It is not known whether Supplemental Benefits Fund agreement covers any person in employment other than that specified in the statute.